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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,515	11/24/2003	Steve Stewart	1238U002	5326

41461 7590 02/10/2005

CHARLES A. RATTNER
12 HOMEWOOD LANE
DARRIEN, CT 06820-6109

EXAMINER

FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/721,515

Applicant(s)

STEWART, STEVE

Examiner

Robert M. Fetsuga

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10, 11, 13-16, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10, 11, 13-16, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 07, 2005 has been entered.

2. Claims 1 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is unclear as to whether the "toilet" is intended to be part of the claimed combination since structure of the "apparatus" is defined as being connected thereto (lns. 3, 4, 6 and 8), but no positive structural antecedent basis therefor has been defined. Claim 19 is similarly indefinite.

Applicant argues at page 7 of the response filed January 07, 2005 the toilet is not part of the claim 1 combination. The examiner accepts this statement, however, the language of claim 1 is not reflective of this position. In this regard, the examiner suggests rewording the claimed relationship between the toilet and the apparatus to be functional. For example, claim 1

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could read "disposable on a left side..." or "for being disposed on a left side...", etc.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 5-7, 13-16, 18 and 19 rejected under 35 U.S.C. 102(b) as being anticipated by Knudsen.

The Knudsen reference (Figs. 1-4) discloses an apparatus comprising: a first bracket (left side of 11); a second bracket (right side of 11); a first geared 35 shaft 34; a lever 12 including a foot pedal 32; a second geared 37 shaft 38; a flange 13; a floor (Fig. 1); a plate 15; a bushing (col. 2 lns. 58-59); a toilet seat 24; a toilet cover 25; a toilet including a tank (col. 3 ln. 53); and a cover, as claimed.

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Applicant argues at page 8 of the response Knudsen does not teach placement of first and second brackets on left and right sides of a toilet bowl. The examiner can not agree. Re claim 1, the toilet is not part of the claimed combination. Re claims 1 and 18, a left and right side of a toilet bowl are not defined therein. Since the brackets of the Knudsen apparatus are not disposed at the same point on the bowl, they inherently would be on a "left side" and "right side" thereof. Re claim 19, left is opposite right. Applicant argues at pages 8-9 of the response Knudsen does not teach geared shafts. The examiner can not agree. Knudsen clearly discloses gears mounted on shafts. The term "geared shaft" does not distinguish this disclosure in Knudsen.

5. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudsen and Alberts.

Although the lever of the Knudsen apparatus does not include upper and lower portions, as claimed, attention is directed to the Alberts reference which discloses an analogous apparatus which further includes a lever 14 having upper 17a and lower 17 portions. Therefore, in consideration of Alberts, it would have been obvious to one of ordinary skill in the art to associate upper and lower portions with the Knudsen apparatus in order to enable length adjustment of the lever.

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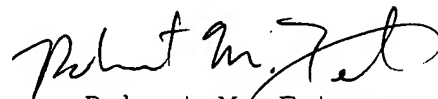
6. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudsen.

The choice of gear ratio would appear an obvious choice to be made depending upon desired seat movement speed.

7. Applicant's remarks have been fully considered and have been previously addressed.

8. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

9. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday.



Robert M. Fetsuga
Primary Examiner
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